

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-1000

November 28, 2000

LEVEL 3 COMMUNICATIONS, LLC
Petition for Finding of Public Convenience
and Necessity to Provide Facilities-Based
and Resold Local Exchange Service

ORDER GRANTING AUTHORITY
TO PROVIDE LOCAL EXCHANGE
SERVICE AS A RESELLER AND
APPROVING SCHEDULE OF RATES
AND TERMS AND CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants Level 3 Communications, LLC (Level 3 or Company) the authority to provide competitive local exchange service as a reseller and approves the Company's Terms and Conditions and Rate Schedules. We also exempt Level 3 from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On December 29, 1998, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Level 3 filed a petition with the Commission requesting authority to provide facilities-based and resold local exchange telephone service. Level 3 obtained authority to provide interexchange service on August 24, 1999 in Docket No. 99-013.

Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued

quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Level 3 the authority to provide local exchange and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

Level 3's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

II. SERVICE TERRITORY

Level 3 initially requested authority to provide facilities-based local exchange service throughout the state. It recently has agreed that its local exchange authority shall be limited to resale until such time as it is prepared to provide facilities-based resold exchange service. We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale. Level 3's authority to provide local exchange service is limited to resale unless it obtains further authorization from the Commission.

If Level 3 wishes to expand the scope of its authority in the future to provide facilities-based switched local exchange services, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. Any such request must specify the specific exchanges where it proposes to offer service and include information establishing a readiness to provide facilities-based local exchange service within six months in the specifically identified areas.

III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions proposed by Level 3 to go into effect. Level 3 has integrated into its terms and conditions portions of the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's petition, Terms and Conditions, and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in Level 3's terms and conditions and the Commission's Rules or a statute, the rule or statute will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Level 3's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by Level 3 to go into effect.

IV. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for Level 3's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153 (37), the "rural exemption" of 47 U.S.C. § 251 (f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254" Although the service territory we grant today is statewide and Level 3's terms and conditions do not limit its service territory, as a practical matter it cannot offer local exchange service in the service territory of a rural ILEC until such time as that ILEC's rural exemption is terminated.

Level 3 does not presently have any interconnection agreements, and none has been filed for approval. If Level 3 executes an interconnection agreement with an ILEC it shall obtain approval of that agreement by this Commission as required by 47 U.S.C. § 252.

V. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, Level 3 must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. Level 3 shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, Level 3 is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Although Level 3 has not requested waivers from the requirements of Chapter 210, and from 35-A M.R.S.A. §§ 707 and 708 for its local exchange service. The Commission has the authority to grant such waivers on its own motion, and we do so. Because Level 3's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, the Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.¹ If Level 3 resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), Level 3

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below.

In addition, Level 3 shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

VI. OTHER REQUIREMENTS

Level 3 shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Level 3 Communications, LLC to provide competitive local exchange telephone service as a reseller in the State of Maine;
2. Exempt Level 3 Communications, LLC from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;

¹The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond